

E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge and E. and W. Management, Inc. d/b/a The Token Lounge and David Erf, a Sole Proprietorship d/b/a Pete and Ann's and Pam Pinch.
Case 7-CA-17824

December 6, 1982

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

SUPPLEMENTAL DECISION AND ORDER

On November 5, 1981, the National Labor Relations Board issued an unpublished Order in the above-entitled proceeding, adopting, in the absence of exceptions, the findings, conclusions, and recommendations of the Administrative Law Judge as contained in his Decision, and directing Respondents, *inter alia*, to make whole the discriminatees for any loss of earnings suffered as a result of Respondents' unfair labor practices. On June 18, 1982, the United States Court of Appeals for the Sixth Circuit, in Case No. 82-1336, issued its mandate enforcing the Board's Order. A controversy having arisen over the amount of backpay due the discriminatees under the terms of the Board's Order, as enforced by the court, the Acting Regional Director for Region 7, on August 25, 1982, issued a backpay specification and notice of hearing, alleging the amount of backpay due. Subsequently, on August 31, 1982, Respondents filed an answer generally denying each allegation of the backpay specification.

On September 13, 1982, the General Counsel, by counsel, filed with the Board a "Motion to Strike Certain Responses of Answer to Backpay Specification and Motion for Partial Summary Judgment." Thereafter, on September 17, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motions should not be granted. On October 1, 1982, Respondents filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following findings:

In the original answer to the backpay specification, Respondents offered only a general denial concerning each of the allegations of the backpay specification. Based on this answer, the General Counsel in its motions contends that Respondents' answer is defective except insofar as it denies the amounts of the discriminatees' interim earnings and

related expenses. The General Counsel states that Respondents' answer generally denies the duration of the backpay period, the measure and amounts of gross backpay for the discriminatees, and the net backpay due them after taking into account interim earnings and related expenses. Relying on Section 102.54 of the Board's Rules and Regulations, Series 8, as amended,¹ the General Counsel contends that these general denials are defective because they do not set forth in detail Respondents' position on the premises of the backpay specification or provide appropriate supporting figures as required by the cited rule.

In the response to the Notice To Show Cause, Respondents state that despite the original denials regarding general backpay liability, the backpay period or the measure for setting gross backpay (salary plus gratuities and commissions), Respondents would stipulate that these are not matters in issue for the previously scheduled hearing. However, Respondents dispute the amounts of tips earned by the discriminatees which have been used to establish the amounts of gross backpay set forth in the backpay specification, as well as the amounts of interim earnings and related expenses set forth therein.

In *Standard Materials, Inc.*, 252 NLRB 679 (1980),² the Board held that, even in the absence of an amended backpay specification, a respondent may amend its answer prior to a hearing in the matter. In this case, we construe Respondents' response to the Notice To Show Cause as an amended answer. Further, although Respondents' original answer, which amounted to a general denial of the entire backpay specification, would have been inad-

¹ Sec. 102.54 provides, in pertinent part, as follows:

(b) . . . The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures.

(c) . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by subsection (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

² See also *Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 17 (Universal Studios and Warner Brothers, Inc.)*, 258 NLRB 753 (1981).

equate under the Board's Rules to the extent urged by the General Counsel, in the response we construe as an amended answer we find that Respondents have clarified this general denial to refer specifically to the amount of tips earned by the discriminatees, which in this case is a matter not within Respondents' knowledge. Accordingly, we are of the opinion that Respondents' amended answer has sufficiently raised this issue which can best be resolved by a hearing. See, generally, *Dews Construction Corp., a subsidiary of The Aspin Group, Inc.*, 246 NLRB 945 (1979). We further find that Respondents' general denials regarding net backpay are adequate because these calculations are based in part on the disputed amounts of interim earnings,³ and because they are based on the disputed amounts of tips used to calculate the amounts of gross backpay. Respondents have not, however, raised any issues in their answer or amended answer as to other matters in the backpay specification pertaining to general backpay liability, the backpay period, or the measure for setting gross backpay,

and their general denial is not sufficient to bring these matters into issue.

Accordingly, we shall order a hearing limited to the determination of the amounts of the discriminatees' gross backpay, interim earnings, and related expenses.

ORDER

It is hereby ordered that the General Counsel's "Motion to Strike Certain Responses of Answer to Backpay Specification and Motion for Partial Summary Judgment" be, and it hereby is, denied.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 7 for the purpose of arranging a hearing before an administrative law judge, limiting such proceeding to the determination of the amounts of gross backpay, interim earnings, and related expenses of discriminatees Pam Pinch, Debbie Williams, Elizabeth Filko, Jonie Zuzindlak, and Cheri Christie, and that the Regional Director be, and he hereby is, authorized to issue notice thereof.

³ See *Fugazy Continental Corp.*, 260 NLRB 1225 (1982).